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In The

Supreme Court of the United States

October Term, 1975

No. 75-279

VIRGINIA BAKER AND
RUSSELL CARL BAKER,

Appellants,

v.

W. C. OWEN, Principal of Gibsonville School; JULIE A. LANGSTON, Teacher at Gibsonville School; and E. P. PEARCE, Jr. Superintendent of Guilford County Public Schools; and RUFUS L. EDMISTEN, Attorney General of the State of North Carolina,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MOTION TO DISMISS APPEAL OR MOTION FOR AFFIRMANCE OF DECISION BELOW

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RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States:

AMENDMENT XIV

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

General Statutes of North Carolina:

"§115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teachers' aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music; and to enter actively into the plans of the superintendent for the professional growth of the teachers. Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education.

Principals, teachers, substitute teachers, voluntary teachers, teachers' aides and assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section. (1955, c. 1372, art. 17, s. 4; 1959, c. 1016; 1969 c. 638, ss. 2, 3; 1971, c. 434.)"

QUESTION PRESENTED

May reasonable force be used, even over parental objection, to control student conduct in the public schools of North Carolina?

MOTION

The Attorney General of North Carolina respectfully moves that this Court dismiss plaintiffs' appeal or, that this Court summarily affirm the decision of the district court.

STATEMENT OF CASE

On Friday, December 7, 1973, Ms. Julie A. Langston was a teacher in the Gibsonville School in Guilford County, North Carolina. She taught Social Studies, Art and Music and Physical Education to all sixth grade students in the school. Russell Carl Baker was a sixth grade pupil at that time and a member of Ms. Shirley Everhart's homeroom. (Russell's mother, plaintiff here, had asked the principal and teachers on several occasions not to punish her children corporally. Apparently, plaintiff opposes corporal punishment by teachers as a matter of principle.)

On December 7, 1973, Russell attended homeroom period and classes changed about 8:30 a.m. He then reported to Ms. Langston's room for Social Studies class. After the Social Studies class was completed, the group went to the gym and engaged in Physical Education activities for approximately thirty minutes. During this time, Russell Carl Baker and other pupils were shooting basketball at one end of the gym.

The class had been instructed that there was not to be any throwing of balls except in the playing area and that the punishment for violating this rule would be a paddling. Shortly before December 7, 1973, two boys in this class had violated the rule and been paddled.

After Physical Education on December 7, 1973, the students in the class, including Russell Carl Baker, lined up outside the

gym in the area where ball throwing was specifically prohibited. When Ms. Langston came out of the gym she saw two students throw balls. One ball hit Russell Carl Baker in the head. Ms. Langston told the two boys she had seen throwing the balls (not Russell Carl Baker) that they knew what they had done was wrong and knew what the punishment was. They acknowledged this.

At this time, Russell Carl Baker volunteered that he had thrown the ball to the boy the teacher had seen throw the ball which struck Russell in the head. Ms. Langston told Russell Carl Baker, "Well, you know what's going to happen to you then, too," and Russell Carl Baker replied, "Yes, ma'am." (Langston dep. p. 11).

Russell Carl Baker acknowledges that at first the teacher was speaking to the other boy and he heard her say the other boy was going to be punished before he spoke up and told her he was throwing the ball. (R. Baker dep. p. 23).

The class returned to the building and classes changed, the class of which Russell Carl Baker was a member going to Ms. Everhart's room. The three boys involved placed their books in the room and returned to the hall. Ms. Langston asked Ms. Everhart to step out in the hall and then explained to her in the presence of the three boys what had happened, what the rule and punishment was. She explained this again to the boys (Langston dep. pp. 12-13; Everhart dep. pp. 5-6). Neither protested in any way. (Langston dep. p. 17; Everhart dep. p. 6).

In turn each boy was paddled upon his buttock. Russell Carl Baker was the third child paddled and the other two boys had returned to the class. Three licks were administered to each boy (Langston dep. p. 14; Everhart dep. p. 8). (Russell Carl says only two. R. Baker dep. p. 13 and p. 27).

While Russell Carl Baker says that the licks on his buttock were "hard" as contrasted to "soft" (R. Baker dep. 14), he

did not cry out or shed any tears or move about. (Langston dep. p. 15; Everhart dep. p. 7; Baker dep. p. 30). [Interestingly enough, the boy says "It felt like hard stinging," (p. 14) when the teacher paddled him, but describes corporal punishment by the mother as "It hurts a lot." (p. 40)].

The "paddle" used was a two-inch wide drawer divider, approximately 13 inches long and three-eighths of an inch thick. (Langston dep. p. 13). Russell Carl Baker describes it as "a little bit bigger than a ruler" (R. Baker dep. p. 13).

Russell went to his next class and left as previously arranged at 11:00 for an alleged "doctor's appointment." He did not have a doctor's appointment (V. Baker dep. p. 36). He did not see a doctor for any reason in December, 1973, January, 1974 and did not see Dr. Lent (the chiropractor) until February 13, 1974. Dr. Lent had not seen the child since May 30, 1973, (Lent dep. p. 20) although he had treated him by manipulation for various pains including pain in the back and hips since 1971. Dr. Lent has not seen the child since February 13, 1974 as of the date of his deposition on June 14, 1974. (Lent dep. p. 14).

(This visit to Dr. Lent in February followed contact with lawyers who filed this action on February 15, 1973—two days later.)

On February 13, 1974, Russell Carl Baker complained of the same subjective symptons as in the several years before the paddling experience. (Lent dep. p. 17 and p. 21). "The treatment was the same."

A three judge court, Circuit Judge Craven and District Court Judges Gordon and Ward, convened 13 January 1975. Its decision, filed 23 April 1975, is reprinted in full in Appellants' brief, pages 18-41. An initial paragraph of the decision summarizes its content.

> "We hold that fourteen amendment liberty embraces the right of parents generally to control means of discipline of their children, but that the state has a countervailing interest in the maintenance of order in the schools, in this case sufficient to sustain the right of teachers and school officials to administer reasonable corporal punishment for disciplinary purposes. We also hold that teacher and school officials must accord to students minimal procedural due process in the course of inflicting such punishment. We further hold that the spanking of Russell Carl Baker in this case did not amount to cruel and unusual punishment."

ARGUMENT

THE INTERPRETATION AND APPLICATION OF G.S. 115-146 WITH RESPECT TO CORPORAL PUNISHMENT IS NOT UNCONSTITUTIONAL.

Appellants do not contend that North Carolina General Statutes, §115-146 is unconstitutional *per se*. That statute authorizes the infliction of reasonable corporal punishment on school children by school officials. Appellants' question on this appeal is simply whether the Constitution allows public school officials to corporally punish school children *over the parents' objection*. In other words, Appellants' attack is based on their contention of unconstitutional *application* in the facts of this case.

A schoolteacher standing *in loco parentis* to his pupils, in the performance of his duties, has the authority to maintain order and exact discipline by use of reasonable force, even against the express directions of a parent to the contrary. R. E. Lee, 3 *North Carolina Family Law*, Section 249, Page 182. In North Carolina, neither the employer-Board of Education nor the District Committee has authority to limit the teacher in this respect. G.S. 115-146.

Restatement of *Torts*, 2d, Section 153(2) holds:

> "One who is in charge of the education or training of a child as a public officer is privileged to inflict such reason-

able punishments as are necessary for the child's proper education or training, nothwithstanding the parent's prohibitions or wishes."

The comment in the Appendix of the Restatement on the foregoing principle is as follows:

> "This subsection applies not only where the parent is required to send his child to a public school, but also where, having the option to send the child to such a school, or to a private school, he elects the former . . . . The fact that a parent expresses a desire that the child should not be punished in a particular way or for a particular offense does not restrict the privilege of the school authorities. The will of the parent cannot defeat the policy of the State. The school authorities, therefore, have such disciplinary privilege as is reasonably necessary to secure the education of the child irrespective of the will of the parent."

The Restatement position is based on the overriding interest of the state in the orderly education process as opposed to the right of privacy of the parent in the child's correction. Recent authoritative Federal decisions support this view. *Ingraham v. Wright*, 498 F. 2d 248 (5th Cir. 1974); *Ware v. Estes*, 328 F. Supp. 657, aff'd 458 F. 2d 1360 (5th Cir. 1972). In support of the use of corporal punishment against parental objection, the Court in *Ware* held:

> "Under the doctrine of Meyer v. Nebraska, 262 U.S. 390, 43 S. Ct. 625 (1922) the state cannot unreasonably interfere with the liberty of parents and guardians to direct the upbringing and education of children under their control. These parental rights are not beyond limitation. Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438 (1943). In order for a deprivation of due process under the Fourteenth Amendment to occur, the rules and policies of the school district must bear 'no reasonable relation to some purpose within the competency of the State.'

> Pierce v. Society of Sisters, 268 U.S. 510, 535, 45 S. Ct. 571, 573 (1924)."
>
> "It is not within this Court's function, or individual competence, to pass judgment upon the merits of corporal punishment as an educational tool or means of discipline. The wisdom of the policy is not the Court's concern. The only judgment made is that the evidence has not shown this policy to be arbitrary, capricious, unreasonable or wholly unrelated to the competency of the state in determining its education policy."

In accord with the decision is *Gonyaw v. Gray*, 361 F. Supp. 366 (D. Vermont 1973), in which the Court held:

> "The plaintiff's next argument, that the statute violates the Fourteenth Amendment due process requirement in its substantive aspect, is equally unavailing because 'liberty,' as guaranteed by the Fourteenth Amendment, does not guarantee the freedom of a school child from the reasonable imposition of school discipline. While under some circumstances gratuitous assault by a person acting under color of state law may entail a violation of Fourteenth Amendment due process, see e.g. Rosenberg v. Martin, supra, 478 F. 2d at 320 (2d Cir. 1973) ("We assume that brutal police conduct violates a right guaranteed by the due process clause of the Fourteenth Amendment."), the use of moderate force may be sanctioned to secure important state interests. See e.g. Schmerber v. California, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966). It is, of course, recognized that the state cannot unreasonably interfere with the right of parents to direct the upbringing of their children. Meyer v. Nebraska, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923). This parental right is not without some limitation. See Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L.Ed. 645 (1943) (parental interest in upbringing of child is subordinate to state interest in child labor law.)

Of necessity, parents must delegate some disciplinary authority over their school children to the teachers who, among other things, are responsible for maintaining the order necessary to the educational process, despite the inevitable presence in the classroom of some students who would rather be elsewhere. The Vermont Supreme Court has recognized that '(t)he State has a legitimate interest in protecting its educational system from disorderly disruption during classes scheduled for the instruction of students.' In re Petitions of Davenport, 129 Ct. 546, 562, 283 A. 2d 452, 461 (1971). 'School discipline, like parental discipline, is an integral and important part of training our children to be good citizens—to be better citizens.' And 'school officials should be accorded the widest authority in maintaining discipline and good order in their institutions.' Tinker v. Des Moines School District, 393 U.S. 503, 524, 526, 89 S. Ct. 733, 746, 747, 21 L.Ed. 2d 731 (1969). Dissenting opinion and Harlan JJ."

Holding that corporal punishment administered under a Georgia statute does not violate the so called right of privacy, and the right to physical integrity or dignity of personality, in an unreported decision, *Whatley v. Pike County Board of Education, et al,* Number 977, United States District Court, Northern District of Georgia, Newnam Division, before Circuit Judge Bell, District Judges Henderson and Moye, that Court in a per curiam opinion, noted:

> ". . . . . By analogy, the plaintiff likens the facts of this case to those before the Supreme Court in Griswold v. Connecticut, 381 U.S. 470 (1965); Skinner v. Oklahoma, 316 U.S. 535 (1942); Loving v. Virginia, 388 U.S. 1 (1967); Meyer v. Nebraska, 262 U.S. 390 (1923); and Pierce v. Society of Sisters, 268 U.S. 510 (1925). We cannot agree with this argument.
>
> In brief, there exists no general constitutional right of privacy, Katz v. United States, 389 U.S. 347 (1967), and

> whatever protection is secured the plaintiffs through the various other constitutional prohibitions must be weighed against the interests of the state in the protection of minors. See, Prince v. Commonwealth of Massachusetts, 321 U.S. 158 (1944). In a somewhat comparable situation, the court in Cornwell v. State Board of Education, 314 F. Supp. 340 (D, Md. 1969), aff'd, 428 F. 2d 471 (4th Cir.), cert. denied, 400 U.S. 942 (1970), upheld the right of the Maryland Board of Education to authorize the teaching of sex education in the public schools over the objections of parents who proclaimed the policy infringed upon their right of parental control. Consequently, where, as here, the interests of the state are deemed superior to those of the plaintiff's parents, the statutes, regulation or policy in issue must be sustained as a permissible exercise of the state's police powers." See also *Sims v. Waln,* 388 F. Supp. 543 (S.D. Ohio, 1974).

However, contrary to the foregoing authorities, is a case relied on by the appellants, *Glaser v. Marietta,* 351 F. Supp. 555 (W.D.Pa. 1972). The case challenges the right of school authorities to utilize corporal punishment on grounds that (a) it constitutes cruel and unusual punishment and (b) it usurps protected rights of parents.

The Pennsylvania statute which is challenged, Pa. Stat. Ann. tit. 24, Sec. 13-1317 (1973) provides:

> "Every teacher, vice principal and principal in the public schools shall have the right to exercise the same authority as to the conduct and behavior over the pupils attending his school, during the time they are in attendance, including the time required in going to and from their homes, as the parents, guardians or persons in parental relation to such pupils may exercise over them."

Under that statute, the principal of the school which the *Glaser* boy attended, as a matter of policy, did not use corporal punishment when parents objected to its use. The plaintiff in

the *Glaser* case did not know of the policy and apparently had not objected to its use at the time the punishment was administered. Cf. 12 Duquesne Law Review, p. 645, Note 1. The Pennsylvania statute strongly implies and can be interpreted that parental consent can be withheld inasmuch as the statute limits the authority of the teacher to the same authority "as the parents, guardians or persons in parental relation to such pupils may exercise over them." It is argued that the Pennsylvania statute and its interpretation by the school administrators led the Court to arrive at a just result in the *Glaser* case which is applicable only to the *Glaser* facts and the *Glaser* community. The Court in *Glaser* was careful not to hold that corporal punishment in the schools was unconstitutional, substantively or procedurally, but only excluded the right to apply corporal punishment in those cases in which parents dissented. Thus, the court arrived at the same policy which the school administrator had been applying for some time before the case was ever brought. Incidentally, the court in *Ingraham v. Wright*, supra, gives little weight to the *Glaser* decision when it comments in note 40 at page 270 that corporal punishment may not have the same importance in every community.

Within the context of the *Glaser* decision, this appellee argues that to apply corporal punishment, (all other factors of legality having been resolved such as enforcement of a reasonable rule and no unreasonable force applied) does not in any significant sense violate the protected rights of a parent to raise a child. The parent continues to possess the right, indeed the duty, to admonish the child not to disobey school rules and to apply himself to reasonable school discipline. The teacher as a representative of the State has a duty to establish and maintain discipline and order in the classroom. This duty is for the benefit of the offending child as well as all other students in the classroom. Corporal punishment of that child to secure discipline and order in no way interferes with the right of the parent to raise the child in accordance with his wishes, provided those wishes do not contemplate violation of school rules or disruption of a public school classroom. The right of a parent

over the training of his child is certainly not absolute and is subject to reasonable regulation of the State, when the interest of the State outweighs the interest of the parent. *Wisconsin v. Yoder*, 406 U.S. 205, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972); *Prince v. Massachusettes*, 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438 (1944).

CONCLUSION

The State of North Carolina submits that through its agents, the teachers, it has a very basic and necessary interest in maintaining order in the public school classrooms. This interest may be furthered where necessary, by the use of reasonable corporal punishment. This is precisely what N.C.G.S. 115-146 allows and what in fact occurred on Friday, December 7, 1973. Mrs. Baker's individual interest in being the sole physical disciplinarian of her child should not stand in the way of effective discipline in North Carolina schools. This contention is grounded in the premise that learning is hardly possible where the environment is disorderly.

The Attorney General of North Carolina respectfully moves that this Court accept this premise and dismiss appellants' appeal. In the alternative, the Attorney General of North Carolina offers his motion for summary affirmance of the decision below.

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